

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVIN ANDERSON, *et al.*,

Plaintiffs,

v.

**Case No. 2:15-cv-1030
Judge Michael H. Watson
Magistrate Judge Elizabeth P. Deavers**

CITY OF COLUMBUS, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

Plaintiffs, Kevin J. Anderson and James R. Harrison (“Plaintiffs”), brought this action against Kim and Esther Laurell (the “Laurell Defendants”) and the City of Columbus in this Court, asserting that Defendants’ refusal to permit them to protest on a portion of the Laurell Defendants’ land that abuts a road violates their First Amendment right to assemble, speak, and demonstrate. This matter is before the Undersigned for a Report and Recommendation on the Laurell Defendants’ Motion to Remand Case Number 2:15-cv-2993 Back to the Court of Common Pleas, Franklin County, Ohio. (ECF No. 23.) For the reasons that follow, it is **RECOMMENDED** that the Laurell Defendants’ Motion be **DENIED**.

The Laurell Defendants filed the subject Motion on November 20, 2015, seeking remand of a *different*, related case pending in this Court, *Laurell v. Anderson*, 2:15-cv-2993 (the “2993 Case”). The Laurell Defendants are the plaintiffs in the 2993 Case. The defendants in the 2993 Case removed that action from state court on November 13, 2015. (The 2993 Case, ECF No. 1.) Following removal of the 2993 action and subsequent to filing the subject Motion in the instant

action, the Laurell Defendants filed a Motion to Remand in the 2993 Case. (The 2993 Case, ECF No. 6.)

Plaintiffs in the instant action point out in their Response to the Laurell Defendants' Motion to Remand (ECF No. 24) that it appears that the Laurell Defendants inadvertently filed subject Motion in this case when they should have filed it in the 2993 Case. The Laurell Defendants failed to file a Reply in support of their Motion to Remand or to otherwise contest Plaintiffs' assertion that the subject Motion was incorrectly filed in this action instead of the 2993 Case.

The Undersigned agrees with Plaintiffs. Inadvertent or not, any Motion addressing whether the 2993 Case should be remanded must be filed in the 2993 Case. Thus, it is **RECOMMENDED** that the Laurell Defendants' Motion be **DENIED** without prejudice to consideration of the Motion to Remand that the Laurell Defendants properly filed in the 2993 Case.

Procedure on Objections

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex*

Prod. Co., 517 F.3d 816, 829 (6th Cir. 2007) (holding that “failure to object to the magistrate judge’s recommendations constituted a waiver of [the defendant’s] ability to appeal the district court’s ruling”); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court’s denial of pretrial motion by failing to timely object to magistrate judge’s report an recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waiver. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) (“[A] general objection to a magistrate judge’s report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal”) (citation omitted))

Date: February 4, 2016

/s/ Elizabeth A. Preston Deavers
ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE